

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

SEPTEMBER 16, 1999

IN RE:)	
)	
SHOW CAUSE PROCEEDING AGAINST)	DOCKET NO. 98-00018
MINIMUM RATE PRICING, INC.)	

**FINAL ORDER REFLECTING FINDINGS OF FACT AND CONCLUSIONS
OF LAW BY THE TENNESSEE REGULATORY AUTHORITY**

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") upon a show cause proceeding initiated pursuant to Tenn. Code Ann. § 65-2-106 and Tenn. Comp. R. & Regs. r. 1220-4-2-.57(16)(c) against Minimum Rate Pricing, Inc. ("MRP"). The Directors of the Authority deliberated upon the merits of this matter at a Special Authority Conference held on April 27, 1999.¹ This Final Order contains the Findings of Fact and Conclusions of Law which were determined by the Authority at the April 27, 1999 Conference.

I. TRAVEL OF THE CASE

As part of MRP's application for permission to provide telecommunications services within the state of Tennessee, MRP certified that it understood and agreed to comply with applicable rules and regulations of the Authority. Relying in part upon MRP's representation, the Authority approved MRP's Application in Docket No. 97-01227 on July 18, 1997, and ordered that MRP comply with all applicable state laws and Authority rules and regulations.

At a regularly scheduled Authority Conference on January 6, 1998, the Authority, on its

¹ Notice of this Authority Conference was included in the Special Conference Agenda issued on April 19, 1999.

own motion and pursuant to Tenn. Code Ann. § 65-2-106 and Tenn. Comp. R. & Regs. r. 1220-4-2-.57(16)(c), considered the preliminary investigation findings of the Authority's Consumer Services Division ("CSD") involving complaints against MRP, and as a result, opened a docket for the purpose of initiating a show cause action against MRP. On July 27, 1998, based upon the CSD's preliminary investigation, the Authority issued its *Order Requiring Minimum Rate Pricing Inc. to Appear and Show Cause Why a Cease and Desist Order, Fine and/or Order Revoking Authority Should Not Be Issued and Appointing Hearing Officer* ("Show Cause Order").

As reflected in the Show Cause Order, the CSD's preliminary investigation of MRP revealed that in 1997, approximately forty-seven (47) Tennessee consumers filed complaints against MRP with the CSD. These complaints alleged that MRP either changed consumers' chosen long distance telephone service providers without their knowledge or consent or otherwise acted in violation of Tennessee law and/or the rules and regulations of the Authority.² Additionally, the Show Cause Order provided that since January 1998, approximately forty-five (45) additional complaints were filed by Tennessee consumers against MRP, twenty-seven (27) of which involved slamming.³ The record shows that no less than one hundred (100) Tennessee consumers filed complaints against MRP with the Authority in 1998, with approximately sixty-one (61) of those consumers filing complaints prior to July 27, 1998.⁴

² The Show Cause Order incorporated with specificity nineteen (19) complaints filed with the Authority against MRP in 1997 by the following persons: Barbara Buchanan, Edward and Pam Canler, Donald and Kathryn Cowan, David and Patricia Druckmiller, Wes Eastman, Cleo Faulkner, Dan and Linda Ford, Jack van Glider, Michael and Judy Herzburg, Ron Highsmith, Marie and Robert Howell, Freddie Jones, Diane and Timothy Linville, Thomas and Angela McNutt, Steve and Faye Moon, Linda Myrick, Jo Dean Reel, Kenneth Robinson, and Ernest J. Sims.

³ Slamming is a colloquialism to denote the unauthorized changing of a consumer's long distance service provider without the consumer's written or oral authorization. Slamming is strictly prohibited by Tenn. Code Ann. § 65-4-125 and Tenn. Comp. R. & Regs. r. 1220-4-2-.56.

⁴ According to the Late-filed Joint Tape Exhibit, there were one hundred thirty two (132) complaints filed against MRP from January 1, 1997, through July 27, 1998 (fifty-four (54) in 1997 and seventy-eight (78) in 1998).

Mr. Eddie Roberson, Chief of the CSD, testified that his Division investigated one hundred thirty two (132) complaints filed against MRP from January 1, 1997, through October 1998.⁵ According to Mr. Roberson, the Authority received fifty-one (51) complaints against MRP in 1997 and eighty-one (81) complaints against MRP through October 1998.⁶ According to MRP, only fifty-three (53) of the 1998 complaints involved solicitations that occurred after January 1, 1998.

The Show Cause Order issued by the Authority on July 27, 1998, specifically alleged that:

- (1) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.13(3) by failing to timely conduct a full and prompt investigation of complaints made by its customers and for failing to timely reply to the CSD with sufficient evidence to demonstrate MRP's compliance with Tenn. Comp. R. & Regs. r. 1220-4-2-.56;
- (2) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(c) by failing to properly verify its orders for changes in long distance carriers, by failing to utilize an "appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative . . . [to] obtain the customer's oral authorization to submit the PIC⁷ change order that includes appropriate verification data (including the customer's date of birth or social security number);"
- (3) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d) by failing to provide each customer with a timely information package that contains a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week, along with the name of the person ordering the change, and clear information pertaining to MRP's practice of automatically switching a customer's long distance service until the customer directly notifies MRP of its desire to change long distance service providers;
- (4) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(e) by apparently failing to maintain all "evidence of change orders for one year for dispute resolution;"

⁵ See Pre-filed Direct Testimony of Eddie Roberson at p. 2; *see also* Hearing Transcript at Vol. IV, pp. 816, 824.

⁶ See Pre-filed Direct Testimony of Eddie Roberson at p. 2-3.

⁷ Primary Interexchange Carrier

(5) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(2) by either failing to or by making misleading and deceptive mandatory disclosures to consumers when seeking to change a customer's PIC; and

(6) MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.57(7)(a) and/or Tenn. Comp. R. & Regs. r. 1220-4-2-.57(11) by billing consumers for intrastate directory assistance and telephone calls made between two (2) points in the same county in Tennessee because such charges exceed the maximum rates of the predominant LEC or IXC for an equivalent call.

MRP filed a response to the Show Cause Order on October 1, 1998. In its response, MRP asserted that it had taken or was prepared to take steps to remedy the numerous complaints filed against it in Tennessee. Further, MRP commented that all but one of the complainants in the Show Cause Order were either reimbursed or declined reimbursement. Finally, MRP asserted that it was generally in compliance with the Authority's rules and regulations and denied that it had ever engaged in a concerted policy of slamming. MRP filed a pre-hearing brief on October 26, 1998. At page 1 of that brief MRP argued that it has not violated the Authority's Rules and further asserted that even if violations had occurred, those violations "do not justify the revocation of MRP's certificate to operate in the state of Tennessee."

On October 23, 1998, the Consumer Advocate Division ("Consumer Advocate") filed a Petition to Intervene in this proceeding which contained allegations that MRP has repeatedly violated Tenn. Code Ann. §§ 65-4-125 and 65-4-122(b). The Hearing Officer considered this petition and, no party having objected thereto, granted the petition.⁸ On November 4, 1998, the Consumer Advocate filed a Motion to Amend and Substitute Petition to Intervene, along with an Amended Petition to Intervene. The Amended Petition to Intervene again alleged violations of Tenn. Code Ann. § 65-4-125. Although it was provided an opportunity to review and comment upon the Motion and the Amended Petition, MRP filed no comments or objections thereto. On

⁸ November 13, 1998, Report & Recommendation, p. 4.

November 16, 1998, the Hearing Officer granted the Consumer Advocate's Motion to Amend and the Substitute Petition was accepted.⁹ MRP did not seek reconsideration or review of the Hearing Officer's Order.

A Hearing on the merits was held in this matter on November 24 and 25, 1998, and December 10 and 11, 1998, before the Directors of the Authority. During the Hearing, the Directors considered the Hearing Officer's *Initial Order Granting The Motion Of The Consumer Advocate To Amend And Substitute Its Petition For Leave To Intervene And Compelling Discovery From Minimum Rate Pricing, Inc. Under Rule 37 Of The Tennessee Rules Of Civil Procedure On Requests From The Tennessee Regulatory Authority Staff* (November 16, 1999) and unanimously adopted and approved that Initial Order. Also, during the course of the Hearing, the Authority addressed the issue of fines or penalties that might be assessed by the Authority and the potentiality of damages that might be recovered by Tennessee consumers under Tenn. Code Ann. § 65-4-125 and reserved those matters for subsequent proceedings depending on the outcome of the Hearing.

At the Hearing the following complainants testified referencing their individual complaints, correspondence with MRP representative(s) and the TRA staff, and in some cases the tape recording of their alleged conversation with MRP sales representatives: Catherine Elizabeth Hagan, Ronald Ray Highsmith, Betty J. Collins, Nikolas B. Kubli, George N. Helm and Igor Popvic. The following Consumer Services Division staff members also testified at the Hearing: Eddie Roberson, Jr., Division Chief; Jean Curran, Manager and Vivian Michael-Wilhoite, Consumer Specialist Investigator. Ms. Barbara Kilkus, Manager of Customer

⁹ Nevertheless, the Issues List attached as Exhibit E to the Report And Recommendation Of the Hearing Officer From The Pre-Hearing Conference Held On November 4, 1998, And Initial Order Granting The Petition For Leave to Intervene Of The Consumer Advocate dated November 13, 1998, did not cite Tenn. Code Ann. § 65-4-125.

Activations for WorldCom Network Services, testified regarding information provided to Consumer Services Division staff during its investigation which related to MRP's customer account information. MRP presented Vice President Francis Andrew Keena, as their only witness.

During the Hearing, the Authority admitted into evidence all consumer complaints referenced in the July 27, 1998, Show Cause Order.¹⁰ Because Mr. W. Martin Seiler withdrew his complaint, the Seiler complaint has been eliminated from consideration in this cause. Further, no findings are made with respect to the Carter, Crosby, Golliday, and Hockman complaints because they were not contained within **Collective Exhibit 18**.¹¹

At the conclusion of the Hearing, the parties were provided the opportunity to file post-hearing briefs and proposed findings of fact and conclusions of law. The Authority Staff and the Consumer Advocate filed post-hearing briefs on February 2, 1999. MRP did not file a post-hearing brief. MRP filed proposed findings of fact and conclusions of law on February 19, 1999. Notwithstanding its lack of objection to the issues raised by the Consumer Advocate on more than one occasion prior to the Hearing, MRP challenged any reliance by the CSD or the Consumer Advocate upon Tenn. Code Ann. §§ 65-4-122 and 65-4-125.¹²

On March 25, 1999, the Consumer Advocate filed a *Motion for Exercise of Police and Regulatory Power to Protect the Public Interest*. The Consumer Advocate's Motion contained the first suggestion to the Authority that MRP had filed a petition in bankruptcy. The Authority

¹⁰ Ninety-two (92) complaints were referenced in the Show Cause Order. This number was approximated and could have been gleaned specifically by MRP through discovery and its own records. With respect to the approximately ninety-two (92) complaints, consumers may have had more than one type of complaint against MRP, bringing the actual number of complaints against MRP to more than ninety-two (92).

¹¹ Collective Exhibit 18 was admitted into evidence on December 10, 1998. This exhibit contains consumer complaint files from 1997 and 1998, including such documentation as consumer complaints received by the CSD, CSD's notification to MRP and MRP's response, where provided.

¹² MRP's Proposed Findings of Fact and Conclusions of Law (February 19, 1999), p.16.

issued an Initial Order on March 25, 1999, which incorporated MRP's agreement to cease and desist solicitation of all business in Tennessee pending a final decision by the Authority.¹³ MRP filed no objection to this Order and it became final on April 5, 1999.

On March 31, 1999, telephone notice was given to counsel for all parties that this matter would be deliberated by the Directors at the April 6, 1999, Authority Conference. The Final Conference Agenda showing this matter, along with other matters, for consideration by the Directors at that Conference, was sent via facsimile to counsel for all parties on April 1, 1999. On April 5, 1999, the Authority received a letter from counsel for MRP in which MRP advised the Authority for the first time that it had filed a petition in bankruptcy on February 26, 1999. In that letter, MRP's counsel opined that this matter had been automatically stayed by Section 362 of the Bankruptcy Code, 11 U.S.C. Section 362.

This matter came before the Directors of the Authority for deliberation and a decision on the merits at the regularly scheduled Authority Conference on April 6, 1999. Upon learning that MRP's counsel would be contesting the jurisdiction of the Authority to proceed in this matter, the Directors determined not to deliberate on the merits of this matter at the April 6th Conference.¹⁴ Instead, the Directors appointed Chairman Melvin Malone to serve as Hearing Officer for the purpose of receiving briefs from the parties and rendering a decision and entering an Initial Order on the issue of jurisdiction. The parties in this matter were directed to file briefs on the issue of jurisdiction not later than 12:00 Noon, Wednesday, April 14, 1999. An Order reflecting this action by the Authority was entered on April 7, 1999, and served on all parties via

¹³ Prior to the close of the Hearing on December 11, 1998, MRP, in response to the Consumer Advocate's motion that a bond be posted by MRP, agreed not to solicit business in the State of Tennessee pending the final resolution of this case. Although a proposed "Agreed Order" was submitted by the parties after the Hearing, the "Agreed Order" did not reflect the agreement entered into on the record by MRP.

¹⁴ No one representing MRP appeared before the Authority at the April 6th Conference.

facsimile on that date. Further, a Notice setting forth the briefing schedule and requirements for the filing of briefs was sent via facsimile to all parties on April 7, 1999. The parties were directed to file briefs on the issue of jurisdiction by April 14, 1999

On April 14, 1999, the Authority Staff and the Consumer Advocate filed their briefs on the issue of jurisdiction. On April 14, 1999, MRP counsel filed a letter with the Authority advising the Authority that MRP would not be filing any brief on the issue of jurisdiction.

II. TRA'S JURISDICTION TO RENDER A DECISION ON THE MERITS

After reviewing the Briefs of the Authority Staff and of the Consumer Advocate Division, and Minimum Rate Pricing, Inc. having expressed to the Authority its decision not to submit a Brief, the Hearing Officer ruled that the Tennessee Regulatory Authority could properly decide the issue of who has jurisdiction to determine jurisdiction. The Hearing Officer then concluded that the TRA has jurisdiction to determine whether the bankruptcy stay should be applicable to this proceeding, or whether this proceeding is an exception to the stay. Thereafter, the Hearing Officer ruled, based upon legal authority binding on the bankruptcy court in New Jersey, that the TRA is the appropriate forum to determine jurisdiction relative to the applicability of the bankruptcy stay, that the TRA is excepted from the provisions of the automatic stay by 11 U.S.C. Section 362(b)(4), and that the Authority could proceed to determine whether MRP has operated in violation of the laws of the State of Tennessee. The Hearing Officer stated further that MRP's contentions about the stay and its refusal to participate in the briefing of the jurisdictional issue constituted efforts on MRP's part to "frustrate necessary governmental functions" of the State of Tennessee in enforcing its statutes and rules and regulations in its effort to protect Tennessee consumers.¹⁵ The Hearing Officer's Initial Order on Jurisdiction was entered on April 16, 1999,

¹⁵ *Order of Hearing Officer Regarding Jurisdiction* (April 16, 1999), p. 11, citing *James v. Draper* (In re *James*), 940 F.2d 46, 53-54 (3rd Cir. 1991).

and when no party filed for reconsideration, it became a final order on April 26, 1999. A copy of the Hearing Officer's Order is attached to this Order as Attachment 1.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After the finding of jurisdiction became final, the Authority proceeded to deliberate on the merits of this case at the Special Authority Conference held on April 27, 1999.¹⁶ At that Conference, the Directors of the Authority made Findings of Fact and Conclusions of Law as reflected in the following sections.

BURDEN OF PROOF

Under Tenn. Code Ann. § 65-2-106, the Authority is specifically empowered to issue a show cause order requiring persons under its jurisdiction to appear before it and demonstrate why the Authority should not take such action as set forth in the show cause order. Tenn. Code Ann. § 65-2-109(5) provides: "that when the authority has issued a show cause order pursuant to the provisions of this chapter, the burden of proof shall be on the parties thus directed to show cause." In this proceeding, the Authority in compliance with Tenn. Code Ann. § 65-2-106, issued a show cause order against MRP which set forth fully and specifically the grounds for the order and provided MRP an opportunity to fully reply to that order. In accordance with Tenn. Code Ann. § 65-2-109, the burden of proof in this matter is on MRP.

ISSUES

The Show Cause Order set forth six (6) issues or areas in which MRP is alleged to be in violation of Authority Rules and Regulations. A seventh issue was raised by the Consumer Advocate addressing possible violations of Tenn. Code Ann. § 65-4-125 occurring after April 6, 1998. In arriving at its decision, the Authority made the following findings of fact and

¹⁶ Notice of Authority Conference was provided for the parties on April 19, 1999.

conclusions of law as to the seven (7) issues presented.

ISSUE I. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.13(1) and (3) by failing to timely conduct a full and prompt investigation of complaints made by its customers and by failing to timely reply to the Authority's Consumer Services Division to demonstrate MRP's compliance with Tenn. Comp. R. & Regs. r. 1220-4-2-.56.

The testimony of Mr. Roberson reveals that the Consumer Services Division encountered repeated delays by MRP in its attempt to show compliance with this Rule. Mr. Roberson testified that while 1220-4-2-.13(3) requires a response within ten (10) working days, MRP failed to respond within twenty (20) days on sixteen (16) specifically identified complaints. Further, Mr. Roberson testified that even when a response was timely, the information provided by MRP was "woefully lacking" and did not comply with subsection .13(1).¹⁷ With the exception of MRP's response to the Jorge Garcia complaint,¹⁸ where MRP responded within eighteen (18) days instead of twenty (20) days, the Authority finds Mr. Roberson's testimony very credible. In fact, MRP admits to responding outside of a twenty-day period with respect to thirteen (13) of the sixteen (16) specifically identified complaints.¹⁹

Finding of Violation

After a full and complete review of the evidentiary record, the Authority finds that MRP has demonstrated an unacceptable pattern of failing to comply with Tenn. Comp. R. & Regs. r. 1220-4-2-.13(3), and with respect to complaints filed on or before July 27, 1998, the Authority finds MRP in violation of Tenn. Comp. R. & Regs. r. 1220-4-2-.13(3). Except as noted herein, in all instances put forth by the CSD and the Consumer Advocate, as shown in the Late-filed Joint Tape Exhibit No. 28,²⁰ MRP failed to respond to the CSD's inquiries within at least twenty

¹⁷ See Pre-filed Direct Testimony of Eddie Roberson at p. 4.

¹⁸ The Garcia complaint was filed after July 27, 1998 and was not substantively considered during this proceeding.

¹⁹ See Pre-filed Rebuttal Testimony of Mr. Drew Keena at p. 3.

²⁰ See Hearing Transcript at Vol. V, pp. 976-994.

(20) days, well beyond the requisite ten (10) day period set forth in the Rule. The Joint Exhibit demonstrates that MRP violated this Rule no less than thirty-two (32) times with respect to the complaints in evidence.

ISSUE II. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(c) by failing to properly verify its orders for changes in long distance carriers, by failing to utilize an “appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative . . . [to] obtain the customer’s oral authorization to submit the PIC change order that includes appropriate verification data (including the customer’s date of birth or social security number).”

The parties disagree over whether MRP has either sought to use or been successful in using the verification procedure described in Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(c). MRP asserted that at no time did it seek to operate under Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(c). Instead, MRP claimed that it complied with Authority rules by use of the information or welcome package procedure described in Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d). Considering MRP’s assertion that it only operated under Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d), the Authority proceeded to determine whether MRP operated properly thereunder.

MRP argued that Rule 1220-4-2-.56(1)(d) permits it to elect to verify sales by providing a written “welcome package” and Notice of Right to Cancellation to all customers who authorized a change of their long distance service provider to MRP. Under this Rule, MRP is not required to use independent third party verification. According to MRP, for quality control purposes, MRP automatically transfers successfully solicited customers to what it calls a verifier immediately after the first solicitation conversation is completed. MRP describes this process as in-house confirmation. The evidence demonstrates and MRP has conceded that the confirmation/verification procedure employed by MRP is not independent. According to MRP,

the purpose of the confirmation inquiry is to assure that the consumer wishes to change his or her long distance service provider to MRP. The confirmation conversation is tape-recorded by MRP.²¹

It is undisputed that an information or welcome package, when properly utilized can satisfy the requirements of Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d). Nevertheless, this method may not be used without prior approval of the consumer. The evidence demonstrates that even assuming that MRP sought to act under Rule 1220-4-2-.56(1)(d), as opposed to Rule 1220-4-2-.56(1)(c), MRP exhibited an unacceptable pattern of failing to comply with Rule 1220-4-2-.56(1)(d).

Under the solicitation process employed by MRP, a telemarketer who follows an MRP-designed script makes the first consumer contact. Mr. Francis Andrew Keena, MRP's Vice President and MRP's sole witness at the Hearing, was cross-examined extensively concerning MRP's script. Mr. Keena was asked to identify every question contained in the post-January 1, 1998 script to which an answer would demonstrate the consumer's desire to switch his or her long distance service to MRP. In response, Mr. Keena identified the following questions and/or statements from the script:

- (1) I need to speak to the person in charge of long distance telephone switching authorization. Is that you?
- (2) As a credit selected long distance user, you have now been pre-approved by MRP for up to a 50% consumer discount on your interstate calling by switching to our new 15 cents per minute long distance service. . . . May I continue?
- (3) Do you spend at least \$10 per month in long distance?
- (4) By switching to MRP a ____ cents discount rate will be available to you.
- (5) Does this line have a Flat or Discount rate currently on either interstate, intrastate, or local toll calling?

²¹ See Minimum Rate Pricing, Inc.'s Pre-filed Direct Testimony (Francis Andrew Keena), p. 2.

(6) Do you have any additional phone numbers?

(7) Who is your current carrier we'll be switching you from?

(8) Now, all I need to do to activate your ___cents a minute plan and switch you to MRP carrier services will be to verify the information we just went over. We will be taping your order and new carrier selection for accuracy, please let us know if the information we have is correct. Do you have any questions before we begin?²²

The above questions from the MRP script do not expressly alert unsuspecting consumers that they are authorizing a switch because the questions in the script never clearly and unambiguously request such authorization from the consumer. Responses to the first six (6) questions or statements identified by witness Keena could not evidence an authorization from the customer. In fact, witness Keena admitted that questions 1, 2, and 4 do not solicit authorization for a switch. In addition, the Authority finds that the plain language of questions 3, 5, and 6 do not solicit a response that would authorize a switch either. Question 7 could be interpreted as "what carrier will we be switching you from should you decide to switch?" Question 8 might be useful if a response was sought from the prospective customer with respect to authorization. Witness Keena conceded under cross-examination that no such response for authorization is sought in question 8.²³ The testimony of Mr. Igor Popovic confirms these conclusions with respect to the script. Mr. Popovic testified that he had requested of MRP that information be sent to him for his review before he would make a decision. He did not receive any information and forgot about the sales call until he received a notice of confirmation that his long distance carrier had been switched.²⁴ When asked if there was any discussion during the sales call that led to his authorization of a switch, Mr. Popovic said no.²⁵

²² See Exhibit 4 attached to Minimum Rate Pricing, Inc.'s Pre-filed Direct Testimony (Francis Andrew Keena).

²³ See Hearing Transcript at Vol. II, p. 401.

²⁴ See Hearing Transcript at Vol. I, p.255.

²⁵ See Hearing Transcript at Vol. I, pp. 272, 277).

While MRP strongly contended that the scripted questions led to obtaining authorization from the consumer, the Authority finds that the script, both on its face and as applied by MRP, is misleading and does not evoke authorization from consumers. Considering the complaints in evidence and the testimony presented at the Hearing, it is abundantly clear to the Authority that the purpose of the script is merely to move to the confirmation process regardless of whether a legitimate authorization has been obtained from the consumer.²⁶ The evidence shows a lack of a good faith effort on the part of MRP to provide the consumer with a reasonable opportunity to authorize, as the term is generally understood, a valid switch.

The evidence demonstrates that some complainants believed that they had authorized nothing. Others thought they had only authorized MRP to send them more information to review before making a decision of whether to select MRP as a carrier. For example, witness Popovic testified that he only asked that the MRP material be sent to him so that he could review it. Mr. Popovic was switched to MRP. The same scenario happened to complainants Betty J. Collins, David Druckmiller, Dan Ford, Catherine Elizabeth Hagan, George N. Helm, Jr., Chief Warrant Officer Nikolas B. Kubli, and Brenda Thompson. MRP witness Keena acknowledged under cross-examination that if a prospective customer merely requested additional information, MRP would send them a standard welcome package and change their carrier after fourteen (14) days.²⁷ Further, the tape recording submitted on the complaint of Pam Canler reveals that when an admittedly confused Ms. Canler merely wanted to review information regarding MRP's offer, she was told by the verifier that the verifier could not send information to her simply for review.²⁸

²⁶ The scripts used prior to January 1, 1998 are equally disturbing and misleading, if not more so.

²⁷ See Hearing Transcript at Vol. III, p. 678.

²⁸ See Exhibit 6 attached to Minimum Rate Pricing, Inc.'s Pre-filed Direct Testimony (Francis Andrew Keena).

While MRP attempted to use the tape-recorded confirmation conversations to prove that customers had in fact authorized a switch, the tapes actually support the position of the complainants rather than the position of MRP. On the Kubli tape, Officer Kubli makes the following statements: (1) "I don't want to change anything as of yet;" (2) "You can send us information;" (3) "Now, we're not making any changes to my service right now? You're just going to send us the information; correct?" to which the telemarketer replied "That's correct, sir;" and (4) "I do not want anything changed."²⁹ Notwithstanding his clear statements to MRP that he did not want his service changed, Officer Kubli had his long distance service switched by MRP. Additionally, the complaint and testimony of Ronald Ray Highsmith clearly demonstrates the problems that arise from the use of a tape as employed by MRP.³⁰ The Authority finds Mr. Highsmith's testimony to be highly credible wherein he refutes the legitimacy for the MRP tape that was submitted to "demonstrate" authorization for a switch of his company's long distance carrier.

The evidence introduced in this matter demonstrates that the consumers in question did not actually "request" a change in service provider prior to being transferred to MRP's "verification" staff. Thus, the Authority finds that MRP's verification tapes are insufficient proof of authorization. Further, the Authority finds that the tapes support the position of the CSD and the Consumer Advocate that the complainants did not authorize or request MRP to change their service. The evidence demonstrates that MRP deems that a consumer has authorized a switch of service if the consumer merely permits MRP to go through the information gathering process. The Authority finds that the tapes, scripts, and testimony show that MRP either did not seek the

²⁹ See Hearing Transcript at Vol. II, pp. 444-447.

³⁰ See Hearing Transcript at Vol. I, pp. 74-76.

consumers' authorization or that MRP knew or reasonably should have known that it did not have consumers' authorization to change their service.

MRP's position with respect to the script is also compromised by Mr. Keena's testimony that the solicitation very rarely results in a sale.³¹ Where telemarketing solicitations very rarely result in a sale, it is most unlikely that the "confirmation process" would "create" a sale. From the record in this matter, the term "confirmation process" in connection with MRP's verification or quality control inquiry has been revealed to be a misnomer. The Authority finds no support for Mr. Keena's statement that "the entire script was written to help consumers make informed decisions[.]"³²

Mr. Keena testified that a customer is not transferred to the verification process unless the initial solicitation is successful. The evidentiary record however, demonstrates that consumers who did not authorize a switch were nonetheless sent through the verification process. One such instance involved witness George M. Helm, Jr. Further, while MRP's "verification" process is represented as a method used only to confirm the solicitation call, Mr. Keena's testimony and the tapes in evidence reveal that the verifier is actually still soliciting the consumer, as opposed to only verifying or confirming the sale.³³

MRP's position is further refuted by the testimony of complainants Betty Collins and Catherine Elizabeth Hagan, each of whom testified that they mailed the postcard to MRP within the required fourteen (14) days, thereby declaring that they did not want MRP's service, but were switched nonetheless. Other complaints in evidence that demonstrate the same problem include the complaints of Druckmiller and Thompson.

³¹ See Hearing Transcript at Vol. II, pp. 397-98.

³² See Mr. Keena's Pre-filed Rebuttal Testimony at 1.

Finding of Violation

The Authority concludes from the evidentiary record that MRP failed to comply with Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(c) on the ground that MRP did not obtain the customer's request for a PIC change. Further, the Authority finds that MRP violated this Rule in all of the instances put forth by the CSD and the Consumer Advocate with respect to the relevant complaints in evidence. With respect to complainants who were subjected to MRP's re-provisioning or automatic switching technique, the Authority finds, by a two to one vote, that they too were subjected to a violation of this Rule.³⁴

ISSUE III. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d) by failing to provide each customer with a timely information package that contains a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week, along with the name of the person ordering the change, and clear information pertaining to MRP's practice of automatically switching a customer's long distance service until the customer directly notifies MRP of its desire to change long distance service providers.

The evidentiary record shows that MRP did not always mail the welcome package as is required under the Rule. Many of the complainants, such as Ford, deny ever receiving any mail from MRP. Further, the evidence supports the assertions of the CSD and the Consumer Advocate that the welcome package sent by MRP did not fully comply with Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d), as it contained material deficiencies in disclosure. Specifically, the welcome package did not comply with subsections (d)(2), (d)(5), (d)(9) of Tenn. Comp. R. & Regs. r. 1220-4-2-.56.³⁵

Collective Exhibit 18 also reveals multiple instances in which MRP violated this Rule. The record reflects circumstances in which MRP violated 1220-4-2-.56(1)(d)(10) by switching

³⁴ Director Kyle voted not to support the finding that MRP's re-provisioning procedure violated Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d).

³⁵ See Pre-filed Direct Testimony of Mr. Roberson at p. 11.

complainants too soon and violated 1220-4-2-.56(1)(d) by failing to mail the welcome package within three (3) business days of the purported authorization. Additionally, Mr. Keena's testimony reveals that MRP's welcome package is not sent to confirm an order, as required under the Rule, and did not contain a statement to this effect. To the contrary, Mr. Keena testified that the MRP welcome package was sent for another purpose and the customer was in fact told of this during the verification inquiry.³⁶ While not solely dispositive of the issue, Mr. Keena's testimony demonstrates that MRP's representatives do not advise customers either during the solicitation or the verification process that the customers have the right to cancel an order before they are switched.³⁷

Given the lack of credibility assigned to Keena's testimony, the Authority is persuaded of MRP's violations here. The failure of MRP in this regard, as demonstrated in the evidentiary record, is unacceptable, particularly given the problems with the script.

Finding of Violation

Based upon the record in the case, the Authority finds that with the exception of subsection .56(1)(d)(4), MRP has violated Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(d) in all of the instances put forth by the CSD and the Consumer Advocate with respect to the relevant complaints in evidence. MRP presented no credible evidence to support its position as to Issue III.

ISSUE IV. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(e) by failing to maintain evidence of change orders for one (1) year for dispute resolution.

MRP disagreed with the CSD's assertion that MRP had violated Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(e). However, under cross-examination by the Consumer Advocate, MRP

³⁶ See Hearing Transcript at Vol. II, pp. 511-13.

³⁷ See Hearing Transcript at Vol. II, pp. 512-13.

witness Keena admitted that MRP does not possess records concerning solicitation calls made on its behalf.³⁸ Moreover, MRP failed to produce such records regarding the solicitation calls made to those persons specifically enumerated in the Authority's July 27, 1998 Show Cause Order.

Finding of Violation

The Authority finds, by a two to one vote, that based upon the evidentiary record, MRP is in violation of Tenn. Comp. R. & Regs. r. 1220-4-2-.56(1)(e) in all of the instances put forth by the CSD and the Consumer Advocate.³⁹

ISSUE V. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.56(2) by either failing to or by making misleading or deceptive mandatory disclosures to consumers when seeking to change a customer's PIC.

Rule 1220-4-2-.56(2) provides for mandatory disclosures that are essential to the protection of consumers.⁴⁰ The complaints in evidence cover each of the disclosures required under this Rule. For example, some complainants, such as Bell, Billings, Faulkner, Hiveley, and Valentine maintain that MRP misrepresented itself during the solicitation call. Others complained that the purpose of the call was either not clearly stated or ambiguous at best and/or that no switch of service was confirmed. MRP offered no evidence to refute these claims.

³⁸ See Hearing Transcript at Vol. III, p. 592.

³⁹ Chairman Malone voted not to support the majority's decision concerning this issue.

⁴⁰ Tenn. Comp. R. & Regs. R. 1220-4-2-.56 subsection 2 states:

Mandatory Disclosures. Any IXC or reseller telemarketing solicitations seeking to change a customer's PIC must include the following disclosures:

- (a) identification of the IXC or reseller placing the call;
- (b) the purpose of the call is to solicit a change of the customer's PIC;
- (c) the customer's PIC may not be changed unless and until the sale is confirmed together with a description of the confirmation process to be used;
- (d) a description of any charge for processing the PIC change that may be imposed by the customer's LEC.

Finding of Violation

After reviewing the evidentiary record as a whole, the Authority concludes that MRP violated Tenn. Comp. R. & Regs. r. 1220-4-2-.56(2) in all instances put forth by the CSD and the Consumer Advocate concerning the relevant complaints in evidence.

ISSUE VI. Whether MRP either has or is violating Tenn. Comp. R. & Regs. r. 1220-4-2-.57(7)(a) and/or Tenn. Comp. R. & Regs. r. 1220-4-2-.57(11) by billing consumers for intrastate directory assistance and telephone calls made between two (2) points in the same county in Tennessee because such charges exceed the maximum rates of the predominant LEC or IXC for an equivalent call.

It is the Authority's understanding that MRP's underlying carrier had plans to voluntarily provide county-wide calling by modifying its billings system in order to suppress county-wide calling charges by October, 1998. With this in mind, it would be inappropriate at this time to penalize MRP for county-wide calling complaints made on or before July 27, 1998.

Finding of No Violation

After considering the record as a whole, it is the reasoned judgment of the Authority that the evidence in the record is insufficient to demonstrate that MRP violated Tenn. Comp. R. & Regs. r. 1220-4-2-.57(7)(a) and/or Tenn. Comp. R. & Regs. r. 1220-4-2-.57(11) for failure to provide county-wide calling because of the technological difficulties that many InterExchange Carrier's ("IXC") have experienced with respect to the provision of the same.

ISSUE VII. Whether MRP violated Tenn. Code Ann. § 65-4-125 concerning complaints in evidence for conduct occurring after the effective date (April 6, 1998) of this statute.

This issue was raised by the Consumer Advocate in the initial pleadings and without timely objection by MRP. The Authority determines that the answer to this question is "yes." The evidentiary record as discussed herein above clearly reflects, in the Authority's judgment,

that MRP committed the illegal acts of slamming as alleged in the relevant complaints in evidence. MRP presented no credible evidence to support its position in regard to this issue.

Finding of Violation

The Authority finds that MRP violated Tenn. Code Ann. § 65-4-125 as to complaints reflecting conduct after April 6, 1998. Notwithstanding the unanimous determination of violations of Tenn. Code Ann. § 65-4-125 as reached in this issue, the Authority does not include such violations as factors relative to its consideration of the revocation of MRP's certification. However, the Authority's findings of violations of this statute may be considered relative to fines and other penalties, which will be addressed in a future damages/penalty phase of this docket.

IV. REVOCATION OF CERTIFICATION

Eddie Roberson testified that according to data furnished to the CSD by Wiltel,⁴¹ which was challenged by MRP on cross-examination, 3,104 Tennesseans disputed PIC changes from MRP in 1997 through September 1, 1998.⁴² Mr. Roberson testified that CSD Staff investigated one hundred thirty two (132) complaints filed against MRP from January 1, 1997 through October 23, 1998.⁴³ Moreover, Mr. Roberson testified that during 1997 and 1998, Tennessee consumers filed more complaints with the Authority against MRP than any other long distance reseller and, in fact, more than those filed against the larger facilities-based carriers.⁴⁴

MRP was clearly on notice of the complaints that were the subject of the Show Cause Order well in advance of the Hearing and, during the course of this proceeding, was provided ample opportunity to present its case before the Authority concerning those complaints. The

⁴¹ Wiltel is MRP's underlying carrier. Wiltel representative Barbara Kilkus testified at the Hearing and provided a list of working telephone numbers involving PIC disputes. The list was under MRP's account number and the disputes were related to unauthorized changes. Hearing Transcript at Vol. I, p. 167.

⁴² See Pre-filed Direct Testimony of Eddie Roberson at p. 13.

⁴³ See Pre-filed Direct Testimony of Eddie Roberson at p. 2; and Hearing Transcript at Vol. IV, pp. 816, 824.

⁴⁴ See Pre-filed Direct Testimony of Eddie Roberson at p. 14; Hearing Transcript at Vol. IV, p. 816.

Authority finds that the evidentiary record unequivocally demonstrates that MRP has repeatedly violated Authority rules and regulations and Tennessee law. Even if the findings in this case were based solely on the forty-seven (47) complaints from 1997, as referenced in paragraph one (1) of the Show Cause Order, the evidence with respect to those complaints alone would, in the Authority's opinion, garner the same result.

Although not an issue in this case, it has not escaped the notice of this body that no less than fifteen (15) consumers filed complaints against MRP with the Authority prior to July 15, 1997, the date on which MRP was authorized to do business in Tennessee.⁴⁵ Complaints were filed alleging misconduct on the part of MRP as early as January and February of 1997. This evidence indicates that MRP was operating as a reseller in Tennessee long before it received authorization from the Authority to do so. The Authority finds that such action on the part of MRP is, to say the least, unconscionable.

For the foregoing reasons and based on the record as a whole, the Authority concludes that MRP stands in repeated violation of Authority rules and state law, both of which it agreed to abide by not long ago. The substantial weight of the evidence demonstrates that MRP has engaged in a pattern of misconduct, including slamming and other violations of Authority rules that is unacceptable in Tennessee. MRP has failed to come forward with sufficient evidence to support its cause herein. The CSD and the Consumer Advocate have clearly and convincingly demonstrated that the facts alleged against MRP are supported by the record. The Authority finds that the evidentiary record demands the revocation of MRP's certification as an operator service provider and a reseller of telecommunications services in the State of Tennessee, effective as of April 27, 1999.

⁴⁵ The order granting certification was issued on July 18, 1997.

Further, the Authority determines that MRP, its agents, representatives, employees, owners, assigns, subsidiaries or other related companies are forbidden, directly or indirectly, under its current name or another name, after April 27, 1999, to solicit any new customers in the State of Tennessee.

Finally, the Executive Secretary of the Tennessee Regulatory Authority has been directed to advise all telecommunications services providers of the revocation of MRP's certificate, so as to protect the public interest. In this regard, a Notice of Revocation of Certification of Minimum Rate Pricing, Inc. was issued on April 27, 1999. A copy of this Notice is attached to this Order as Attachment 2.

IT IS THEREFORE ORDERED THAT:

1. Based upon the record in this proceeding, Minimum Rate Pricing, Inc. is in violation of Tenn. Comp. R. & Regs. r. 1220-4-2-.13(3); 1220-4-2-.56(1)(d); 1220-4-2-.56(d)(2), (d)(5), (d)(9); 1220-4-2-.56(1)(e); 1220-4-2-.56(2); and Tenn. Code Ann. § 65-4-125.

2. As a result of the violations set forth in this Order, the Certification as an operator service provider and a reseller of telecommunications services granted to Minimum Rate Pricing, Inc. by Order of the Tennessee Regulatory Authority entered in Docket No 97-01227 on July 18, 1997, is revoked effective April 27, 1999, the date this decision was rendered.


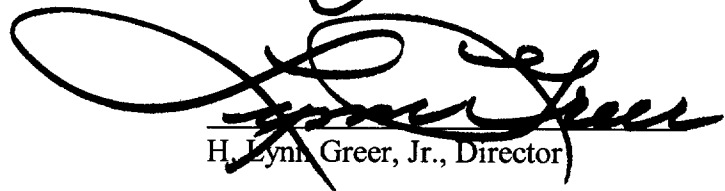
3. As a result of the revocation of its Certification, Minimum Rate Pricing, Inc. and its agents, representatives, employees, owners, assigns, subsidiaries or other related companies are prohibited, directly or indirectly, under its current name or another name, from soliciting any new customers in the State of Tennessee effective April 27, 1999.

4. The Executive Secretary of the Tennessee Regulatory Authority is authorized to advise all telecommunications services providers of the revocation of MRP's certificate, as necessary to protect the public interest.

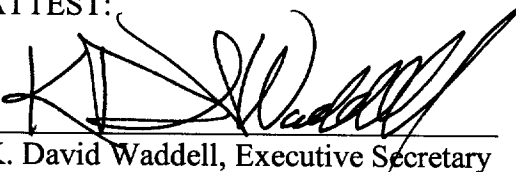
5. The assessment of fines or penalties against MRP associated with the violations set forth in this Order is reserved for further action by the Authority in this docket. Notice will be provided to all parties as to additional proceedings in this regard.

6. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

7. Any party aggrieved by the Authority's decision in this matter may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman
H. Lynn Greer, Jr., Director
Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 16, 1999

IN RE:)
)
SHOW CAUSE PROCEEDING) DOCKET NO.: 98-00018
AGAINST MINIMUM RATE PRICING,)
INC.)

ORDER OF HEARING OFFICER REGARDING JURISDICTION

This matter comes before the Hearing Officer Melvin J. Malone, pursuant to the April 7, 1999, Order of the Tennessee Regulatory Authority, for a decision on the issue of jurisdiction. The Hearing Officer having reviewed the Briefs of the Authority Staff and of the Consumer Advocate Division and Minimum Rate Pricing, Inc. having decided not to submit a Brief, rules that the Tennessee Regulatory Authority may properly decide the issue of who has jurisdiction to determine jurisdiction. Further, the Hearing Officer determines that the Authority does have jurisdiction to determine whether the exception to the bankruptcy stay should be applied to this proceeding and rules.

I. Travel of the Case

On January 6, 1998, at a regularly scheduled Authority Conference, the Tennessee Regulatory Authority ("the Authority" or "the TRA"), considered the preliminary investigation findings of the Authority's Consumer Services Division against Minimum Rate Pricing, Inc. ("MRP") and ordered that a docket be opened for the purpose of issuing a show cause action against MRP pursuant to Tenn. Code Ann. § 65-2-106 and Authority Rule 1220-

ATTACHMENT

4-2-.57(16)(c). On July 27, 1998, the Authority issued its *Order Requiring Minimum Rate Pricing, Inc. to Appear and Show Cause Why A Cease and Desist Order, Fine and/or Order Revoking Authority Should Not Be Issued and Appointing Hearing Officer*.

Based upon Staff's preliminary investigation, the Authority issued the Show Cause Order and specifically stated that (1) MRP either has or is violating Authority Rule 1220-4-2-.13(3) by failing to timely conduct a full and prompt investigation of complaints made by its customers and for failing to timely reply to the Authority's Staff with sufficient evidence to demonstrate MRP's compliance with Authority Rule 1220-4-2-.56; (2) MRP either has or is violating Authority Rule 1220-4-2-.56(1)(c) by failing to properly verify its orders for changes in long distance carriers, by failing to utilize an "appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative . . . [to] obtain the customer's oral authorization to submit the PIC change order that includes appropriate verification data (including the customer's date of birth or social security number)"; (3) MRP either has or is violating Authority Rule 1220-4-2-.56(1)(d) by failing to provide each customer with a timely information package that contains a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week, along with the name of the person ordering the change, and clear information pertaining to MRP's practice of automatically switching a customer's long distance service until the customer directly notifies MRP of its desire to change long distance service providers; (4) MRP either has or is violating Authority Rule 1220-4-2-.56(1)(e) by apparently failing to maintain all "evidence of change orders for one year for dispute resolution"; (5) MRP either has or is violating Authority Rule 1220-4-2-.56(2) by

either failing to or by making misleading and deceptive mandatory disclosures to consumers when seeking to change a customer's PIC; and (6) MRP either has or is violating Authority Rule 1220-4-2-.57(7)(a) and/or Authority Rule 1220-4-2-.57(11) by billing consumers for intrastate directory assistance and telephone calls made between two (2) points in the same county in Tennessee because such charges exceed the maximum rates of the predominant LEC or IXC for an equivalent call.

The Show Cause Order indicated that in 1997, approximately forty-seven (47) Tennessee telephone service consumers filed complaints with the Authority Staff against MRP alleging that MRP either changed their chosen long distance service provider without their knowledge or consent or otherwise acted in violation of either Tennessee law or the rules and regulations of the Authority. Additionally, the Show Cause Order provided that since January, 1998, approximately forty-five (45) consumers filed complaints against MRP, twenty-seven (27) of which involved allegations of slamming.

MRP filed a Response to the Show Cause Order on October 1, 1998. MRP maintained that it was generally in compliance with the Authority's rules and regulations and denied that it has ever engaged in a concerted policy of slamming. MRP stated that all but one complainant in the Show Cause Order were either reimbursed or declined reimbursement.

On October 23, 1998, the Consumer Advocate filed a Petition to Intervene in this proceeding, alleging, among other things, that MRP has repeatedly violated Tenn. Code Ann. §§ 65-4-125 and 65-4-122(b). This petition was granted without objection. On November 4, 1998, the Consumer Advocate filed a Motion to Amend and Substitute Petition to Intervene,

along with an Amended Petition to Intervene. The Amended Petition to Intervene again alleged violations of § 65-4-125. After being provided an opportunity to review and comment upon the motion and the amended petition, MRP filed no comments or objections, and the motion was granted and the amendment was permitted.

This matter went to hearing before the Authority on November 24 and 25, 1998 and December 10 and 11, 1998. At the conclusion of the hearing, counsel for MRP, Walter Diercks, agreed that MRP would not solicit any business in the state of Tennessee from that point in time until a decision on the merits by the Authority. The parties agreed to reduce that agreement to writing and submit it to the Authority. The parties were provided the opportunity to file post-hearing briefs and proposed findings of fact and conclusions of law. The Authority Staff and the Consumer Advocate filed post-hearing briefs on February 2, 1999. MRP did not file a post-hearing brief. On February 19, 1999, the Authority Staff and the Consumer Advocate filed a joint proposed findings of fact and conclusions of law. On February 19, 1999, MRP also filed proposed findings of fact and conclusions of law.

On March 25, 1999, the Authority entered an Order to Cease and Desist based on the agreement entered into by the parties prior to the conclusion of the Hearing on December 11, 1998. That Order became a final order without objection on April 5, 1999. On March 24, 1999, the Consumer Advocate filed a Motion for Exercise of Police Power and Regulatory to Protect the Public Interest. The Consumer Advocate's Motion contained the first suggestion to the Authority that MRP had filed a petition in bankruptcy. On March 31, 1999, oral notice was given to counsel for all parties that this matter would be deliberated by the Directors at the April 6, 1999, Authority Conference. The Final Agenda showing this matter, along with

numerous other matters for consideration by the Directors, on the Conference schedule was sent via facsimile to counsel for all parties on April 1, 1999.

On April 5, 1999, the Authority received a letter filing from Walter Diercks, Esq., counsel for MRP, in which Mr. Diercks advised the Authority for the first time that MRP. had filed a petition in bankruptcy on February 26, 1999. Mr. Diercks stated that in his opinion that this matter “has been automatically stayed by Section 362 of the Bankruptcy Code, 11 U.S.C. Section 362.” In his letter, Mr. Diercks advised the Authority to direct all inquiries regarding the bankruptcy to MRP’s bankruptcy counsel: Bruce Frankel, Esq. of Angel and Frankel, P.C. in New York, New York.

This matter came before the Tennessee Regulatory Authority (“the Authority”) for deliberation and a decision on the merits by the Directors at a regularly scheduled Authority Conference held on April 6, 1999. Upon learning that Minimum Rate Pricing, Inc.’s bankruptcy counsel would be contesting the jurisdiction of the Authority to proceed in this matter, the Authority determined not to deliberate on the merits of this matter at this Conference. Instead, the Directors voted to appoint Chairman Melvin Malone to serve as Hearing Officer for the purpose of rendering a decision and entering an Initial Order on the issue of jurisdiction. The Directors directed the parties in this matter to file briefs on the issue of jurisdiction not later than 12:00 Noon, Wednesday, April 14, 1999. An Order reflecting the action of the Directors was entered on April 7, 1999. A Notice setting forth the briefing schedule and requirements for the filing of briefs was sent to all parties on April 7, 1999. The Order and Notice are attached hereto as Exhibit A and Exhibit B, respectively.

On April 14, 1999, the Authority Staff and the Consumer Advocate filed briefs on the issue of jurisdiction. At approximately 9:30 a.m. on April 14, 1999, Mr. Dierks filed a letter with the Authority advising the Authority that he would not be filing any brief on the issue of jurisdiction. The main thrust of Mr. Diercks' letter consisted of a re-hash of his letter filed with the Authority on April 5, 1999, in which he stated "that the automatic stay applies to the instant Show Cause proceeding and that no exception to the automatic stay is applicable in the instant case. (Citing *Fugazy Express, Inc. v. Shimer*, 124 B.R. 426 (S.D.N.Y. 1991)).

II. Decision on Jurisdiction Issue

The Tennessee Regulatory Authority is a governmental unit endowed by the Tennessee General Assembly with police and regulatory powers. This action is an administrative, regulatory proceeding, the purpose of which is to enforce both state law and the TRA's own rules and regulations. It is clear that the Authority commenced this show cause proceeding long before MRP filed its bankruptcy petition.

MRP has argued that because it has filed bankruptcy in the United States Bankruptcy Court for the District of New Jersey, 11 U.S.C. § 362¹ of the Bankruptcy Code bars the TRA

¹ The applicable stay provisions of § 362 provide:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

from going forward with its ruling on the Order to Show Cause. MRP does not agree that the exception to the automatic stay for the exercise of police and regulatory power by a governmental unit² applies to the TRA's ruling.

A. JURISDICTION TO DETERMINE APPLICABILITY OF THE AUTOMATIC STAY

MRP first raises the issue of the TRA's authority to determine the scope of the automatic stay. The law in this regard is clear.³ The United States Court of Appeals for the Third Circuit has determined that "[t]he court in which the litigation claimed to be stayed is pending thus 'has jurisdiction to determine not only its own jurisdiction but also the more

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

* * * * *

² That portion of section 362 provides in pertinent part:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

* * * * *

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

³ The Sixth Circuit Court of Appeals, the federal circuit which includes the State of Tennessee, and the Third Circuit, the Circuit which binds the Court in which the Debtor has filed its bankruptcy petition, have reached the same conclusion as to this issue. Accordingly, we do not need to reach the question of which circuit's law applies.

precise question whether the proceeding pending before it is subject to the automatic stay."⁴ The United States Court of Appeals for the Sixth Circuit has reached the same conclusion.⁵

In Mr. Diercks' letter (filed April 14, 1999), MRP has suggested that these cases do not apply to state forums but only to federal courts. However, the Sixth Circuit Bankruptcy Appellate Panel has specifically looked at the issue and decided otherwise.⁶ Additionally, in the Third Circuit's discussion of cases in which it held that the state agencies involved were not stayed by Section 362,⁷ it has not suggested that those agencies should have ceased their activities nonetheless so that the bankruptcy court could issue a declaratory judgment (more time consuming and costlier than a motion for relief from the stay) that a motion for relief from the stay is not necessary. MRP offers no authority for its position that only federal non-bankruptcy courts may determine the scope of the stay, and in the face of the authority listed here, MRP's contention is rejected. The TRA has the authority to determine whether the automatic stay bars it from issuing its decision and order on the Order to Show Cause.

B. APPLICATION OF THE AUTOMATIC STAY

The decisions of the United States Court of Appeals for the Third Circuit are conclusive that the TRA is not barred by §362 from issuing a decision on the merits of the

⁴ Brock v. Morysville Body Works, Inc., 829 F.2d 383, 387 (3rd Cir. 1987)(Citing In re Baldwin-United Corporation Litigation, 765 F.2d 343, 347 (2d Cir.1985). NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 936, 938-39 (6th Cir.1986))

⁵ NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 936, 938-39 (6th Cir.1986))

⁶ Singleton v. Fifth Third Bank, et al., 230 B.R. 533, 538, (Bankr. 6th Cir. 1999).

⁷ See Penn Terra Limited v. Department of Environmental Resources, Commonwealth of Pennsylvania, 733 F.2d 267 (3rd Cir. 1983);

Order to Show Cause. In addition to Brock v. Morysville Body Works,⁸ the Third Circuit has on many occasions held that §362 exempts actions “brought by state and federal agencies to correct violations of regulatory statutes enacted to promote health and safety.”⁹ Virtually each decision repeats the legislative history which states that “paragraph (4) provides an exception to the automatic stay ‘where a governmental unit is suing a debtor to stop violation of fraud, environmental protection, **consumer protection**, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law.’”¹⁰ (Emphasis added).

In addition, the Third Circuit has held that “considerations favoring liberal construction of the exception to the automatic stay provisions found in subsections 365(b)(4)-(5) outweigh the contrary considerations . . . favoring a more restrictive construction.”¹¹ The Circuit has further stated:

The police power of the several States embodies the main bulwark of protection by which they carry out their responsibilities to the People; its abrogation is therefore a serious matter. Congress should not be assumed, therefore, to have been miserly in its refund of that power to the States. Where important state law or general equitable principles protect some public

⁸ 829 F.2d 383, supra.

⁹ James v. Draper (In re James), 940 F.2d 46 (3rd Cir. 1991); United States v. Nicolet, Inc., 857 F.2d 202 (3rd Cir. 1988); Brock v. Morysville Body Works, Inc., 829 F.2d 383 (3rd Cir. 1987) (citing United States v. Wheeling-Pittsburgh Steel, 818 F.2d 1077 (3rd Cir. 1987); Penn Terra, Ltd. v. Department of Environmental Resources, 733 F.2d 267 (3rd Cir. 1984); see also Midlantic National Bank v. New Jersey Department of Environmental Protection, 474 U.S. 494, 106 S.Ct. 755, 761, 88 L.Ed.2d 859 (1986))

¹⁰ See, for example, Brock v. Morysville Body Works, Inc., 829 F.2d at 387, citing H.R.Rep. No. 595, 95th Cong., 2nd Sess. 343, reprinted in 1978 U.S.Code Cong. & Ad.News 5963, 6299

¹¹ Penn Terra Limited v. Department of Environmental Resources, Commonwealth of Pennsylvania, 733 F.2d at 273.

interest, they should not be overridden by federal legislation unless they are inconsistent with explicit congressional intent such that the supremacy clause mandates their supersession.¹²

C. CONCLUSION

Based upon the legal authority cited above, which would bind the bankruptcy court in New Jersey were the issue to come before it, the TRA is excepted from the provisions of the automatic stay in determining whether MRP has operated in violation of the laws of the State of Tennessee. It should be noted that these cases, which hold that the TRA may issue injunctions and determine whether the debtor may operate under state law, were all decided under a more restrictive version of §362(b)(2) than is presently in effect.¹³ These cases limit only the TRA's ability to collect a money judgment.¹⁴ They clearly support the ability of the TRA to move forward with a decision on the merits of this action and fix penalties, including fines and revocation, against MRP should the findings of the Directors warrant such.

While Mr. Diercks asserts in his letter that he is not waiving his client's "rights to raise any objection or issue...", MRP has foregone its opportunity to appear before this tribunal through a brief and argue its position on the matters being decided in this Order. In James v. Draper (In re James), 940 F.2d 46, 53-54 (3rd Cir. 1991), the Third Circuit Court stated:

¹² James v. Draper, 940 F.2d at 52, citing Penn Terra, supra.

¹³ Section 362(b)(4) and (b)(5) were combined in October of 1998, and expanded in scope to allow actions by governmental units to obtain possession of or exercise control over property of the estate.

¹⁴ United States v. Nicolet, Inc., supra, 857 F.2d 202.

The Debtor should not be rewarded for sitting on [its] rights and expecting the filing of a ...petition to shield [it.] In carving out the section 362(b)(4) exception, Congress intended to combat the risk that defendants could “frustrate necessary governmental functions” by seeking refuge in bankruptcy court. (Citations omitted.)


The Hearing Officer is of the opinion that MRP’s contentions about the stay and its refusal to participate in the briefing of the jurisdictional issue are indeed efforts on its part to “frustrate necessary governmental functions” of the state of Tennessee in enforcing its statutes and rules and regulations in an effort to protect Tennessee consumers.

IT IS THEREFORE ORDERED THAT:

1. The Tennessee Regulatory Authority has jurisdiction to determine the issue of jurisdiction with regard to the scope of the automatic stay.
2. The Tennessee Regulatory Authority has jurisdiction to proceed to deliberate this matter on the merits because this action is excepted from the automatic stay by 11 U.S.C. Section 362(b)(4).
3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Authority within ten (10) days from the date of this Order.


Chairman Melynn J. Malone, Acting
as Hearing Officer

ATTEST:


Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

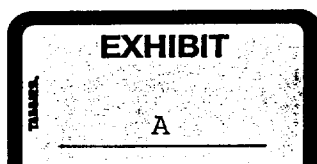
April 7, 1999

IN RE:)
)
SHOW CAUSE PROCEEDING) DOCKET NO.: 98-00018
AGAINST MINIMUM RATE PRICING,)
INC.)

ORDER REFLECTING ACTION TAKEN AT
APRIL 6, 1999, AUTHORITY CONFERENCE

This matter came before the Tennessee Regulatory Authority ("the Authority") for deliberation and a decision on the merits by the Directors at a regularly scheduled Authority Conference held on April 6, 1999. On April 5, 1999, the Authority received a letter filing from Walter Diercks, Esq., counsel for Minimum Rate Pricing, Inc., in which Mr. Diercks advised the Authority for the first time that Minimum Rate Pricing, Inc. had filed a petition in bankruptcy on February 26, 1999, and that he was of the opinion that this matter "has been automatically stayed by Section 362 of the Bankruptcy Code, 11 U.S.C. Section 362."¹ In his letter, Mr. Diercks advised the Authority to direct all inquiries regarding the bankruptcy to Minimum Rate Pricing, Inc.'s bankruptcy counsel: Bruce Frankel, Esq. of Angel and Frankel, P.C. in New York, New York. Upon learning that Minimum Rate Pricing, Inc.'s bankruptcy counsel would be contesting the jurisdiction of the Authority to proceed in this matter, the Authority determined not to deliberate on the merits of this matter at this

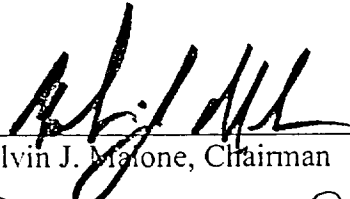
¹ Letter of Walter E. Diercks to K. David Waddell, April 2, 1999, p. 1. A copy of Mr. Diercks' letter is attached to this Order as Exhibit A.

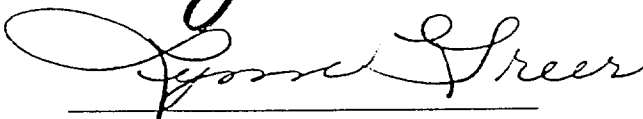


Conference. Instead, the Directors voted to appoint Chairman Melvin Malone to serve as Hearing Officer for the purpose of rendering a decision and entering an Initial Order on the issue of jurisdiction. The Directors directed the parties in this matter to file briefs on the issue of jurisdiction not later than 12:00 Noon, Wednesday, April 14, 1999. A Notice setting forth the schedule and requirements for the filing of briefs will be sent to the parties by the Authority's Executive Secretary.

IT IS THEREFORE ORDERED THAT:

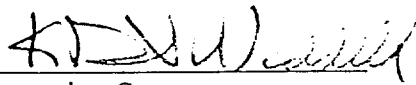
1. Chairman Melvin Malone is hereby appointed to serve as Hearing Officer in this matter and to render an Initial Order on the issue of whether the Authority has jurisdiction to proceed to deliberate this matter on the merits in light of the automatic stay under the Bankruptcy Code, 11 U.S.C. Section 362.
2. The parties shall file briefs with the Authority on the issue of the jurisdiction not later than 12:00 Noon, Wednesday, April 14, 1999.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


Executive Secretary

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.
ATTORNEYS AT LAW
TENTH FLOOR
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

TELEPHONE (202) 861-0870 FAX (202) 429-0657

FAX TRANSMISSION COVER SHEET

Confidentiality Notice

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TO: K. David Waddell
Executive Secretary
Tennessee Regulatory Authority

FAX #: 615-741-5015

CONF. #: 615-741-3191

This telecopy transmission consists of 5 pages, including this page.

FROM: Walter E. Diercks

DATE: April 5, 1999

COMMENTS: Please deliver immediately upon receipt

If a problem of clarity of transmission arises, please call Sonia at (202) 861-0870.

EXHIBIT

A

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

TENTH FLOOR

1803 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, D.C. 20038

(202) 881-0870

FAX: (202) 429-0657

April 2, 1999

**BY FACSIMILE, FEDERAL EXPRESS,
AND U.S. EXPRESS MAIL**

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Docket No. 98-00018
Show Cause Proceeding Against Minimum Rate Pricing, Inc.

Dear Mr. Waddell:

This is to inform the Tennessee Regulatory Authority that Minimum Rate Pricing, Inc., the subject of the above-captioned Show Cause Proceeding, filed a petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. Section 1101, *et seq.*, on February 26, 1999. A copy of the first page of the MRP petition is enclosed for your information.

Please be advised that the instant Show Cause proceeding has been automatically stayed by Section 362 of the Bankruptcy Code, 11 U.S.C. Section 362. I call to the Authority's attention *Fugazy Express, Inc. v. Shimer*, 124 B.R. 426 (S.D.N.Y. 1991), *appeal dismissed*, 982 F.2d 769 (2d Cir. 1992). Any issue regarding the scope and effect of the automatic stay and any request for relief from the automatic stay must be presented to and resolved by the United States Bankruptcy Court for the District of New Jersey, Newark Division.

Because this proceeding has been stayed, MRP is not filing a response to the Motion for Exercise of Police and Regulatory Authority to Protect the Public Interest, which was filed in violation of the automatic stay on March 24, 1999 by the Consumer Advocate Division of the Office of the Attorney General and Reporter. We believe that the substance of the CAD's Motion is subject to the stay.

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

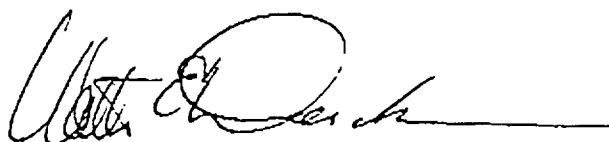
Mr. K. David Waddell
April 2, 1999
Page 2

Please direct all correspondence regarding the MRP bankruptcy or the automatic stay to MRP's bankruptcy counsel:

Bruce Frankel, Esq.
Angel & Frankel, P.C.
460 Park Avenue
New York, N.Y. 10022-1906
Telephone: (212) 752-8000

I further request that a copy of this letter be placed in the docket for the above-captioned proceeding.

Very truly yours,



Walter E. Diercks

cc: L. Vincent Williams, Esq. (with enclosures)
Carla G. Fox, Esq. (with enclosures)
Bruce Frankel, Esq. (without enclosures)

----- United States Bankruptcy Court ----- VOLUNTARY PETITION -----
 DISTRICT OF NEW JERSEY
 NEWARK DIVISION

IN RE -----	NAME OF JOINT DEBTOR -----
Minimum Rate Pricing, Inc.	N/A
ALL OTHER NAMES -----	ALL OTHER NAMES -----
	N/A
None	
SOC. SEC./TAX I.D. NO. -----	SOC. SEC./TAX I.D. NO. -----
22-3488800 3388629	N/A
STREET ADDRESS OF DEBTOR -----	STREET ADDRESS OF JOINT DEBTOR -----
150 Commerce Road	N/A
Cedar Grove, NJ 07009	
COUNTY ----- TEL-(973) 857-4200	COUNTY ----- TEL- N/A
Essex	N/A
MAILING ADDRESS OF DEBTOR -----	MAILING ADDRESS OF JOINT DEBTOR -----
150 Commerce Road	N/A
Cedar Grove, NJ 07009	
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR -----	
N/A	

VENUE -----
 Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

----- INFORMATION REGARDING DEBTOR -----	
TYPE: Corporation: NOT publicly held	CHAPTER OF BANKRUPTCY -----
NATURE: Business	UNDER WHICH THE PETITION IS FILED: 11
A. TYPE OF BUSINESS	FILING FEE
Other Business	Attached

B. BRIEFLY DESCRIBE NATURE OF BUSINESS
 Reseller of telecommunications services

STATISTICAL/ADMINISTRATIVE INFORMATION---	ATTORNEY NAME(S)/ADDRESS --
Debtor estimates that, after any exempt property excluded and administrative expenses paid, NO funds will be available for distribution to unsecured creditors.	Louis Pashman
	Bar #LP-1009
	PASHMAN STEIN
	45 Essex Street
	Hackensack, NJ 07601

----- range -- (sard code) -	(201) 488-8200
NO. OF CREDITORS 100-199 (4)	
ASSETS (thousands) 10,000-99,999 (6)	
LIABIL. (thousands) 100,000-over (7)	
NO. OF EMPLOYEES 0 (1)	
EQUITY SEC. HOLDERS 1-19 (2)	

----- THIS SPACE FOR COURT USE ONLY -----

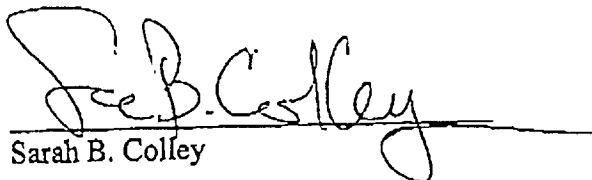
FILED
 99 FEB 26 AM 10:49
 JOSEPH V. EGAN
 DEPUTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was served on the following parties of record on April 2, 1999 by facsimile, Federal Express and U.S. Express Mail by sending the facsimile copy to the facsimile machine of the recipient, placing the overnight courier copy in the possession of Federal Express and depositing the mail copy in the United States mail, postage prepaid:

Carla G. Fox, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

L. Vincent Williams, Esq.
Deputy Attorney General-Consumer Advocate
Consumer Advocate Division
Second Floor
425 Fifth Avenue, North
Nashville, TN 37243


Sarah B. Colley

TENNESSEE REGULATORY AUTHORITY

Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE OF FILING BRIEFS

DOCKET: 98-00018

RESPONDENT: MINIMUM RATE PRICING, INC.

IN RE: SHOW CAUSE PROCEEDING AGAINST MINIMUM
RATE PRICING

DATE: APRIL 7, 1999

On April 6, 1999, at a regularly scheduled Authority Conference, Chairman Melvin Malone, Director Lynn Greer and Director Sara Kyle voted to appoint Chairman Malone to act as Hearing Officer in this matter for the purpose of rendering a decision and entering an Initial Order on the issue of jurisdiction. The Directors also directed the parties in this matter to file briefs on the issue of jurisdiction not later than **12:00 noon, Wednesday, April 14, 1999**. Briefs shall be delivered to K. David Waddell, Executive Secretary, Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243

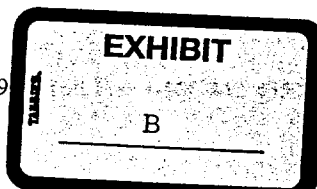
Any party filing a brief will serve a copy of that brief on the following persons via facsimile, at the time of filing, at the fax numbers listed below.

Rochelle Weisburg, Esq.
Angel and Frankel, P.C.
460 Park Avenue
New York, NY 10022-1906
FAX: (212) 752-8393

Gary Hotvedt, Esq.
TN Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
FAX: (615) 741-2336

Telephone (615) 741-29

Facsimile (615) 741-5015



Walter E. Diercks, Esq.
Rubin, Winston, Diercks,
Harris and Cooke
1333 New Hampshire Ave. N.W.
10th Floor
Washington, DC 20036
FAX: (202) 429-0657

Richard Collier, Esq.
General Counsel
TN Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
FAX: (615) 741-5015

L. Vincent Williams
Deputy Attorney General
Consumer Advocate Division
425 5th Avenue North
2nd Floor
Nashville, TN 37243
FAX: (615) 741-8724

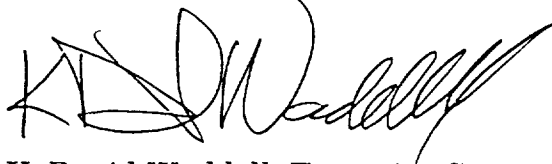
The Hearing Officer will issue an Initial Order on the jurisdictional question on or after April 16, 1999.

After the Initial Order is issued, the parties will have ten (10) days to ask for reconsideration or to appeal to the Directors, as provided by the Uniform Administrative Procedures Act (UAPA). (Tenn. Code Ann. §4-5-301, et seq.)

After reconsideration or appeal, the Directors will render a Final Order on the jurisdiction. That decision will become final as provided by the UAPA.

If the final decision holds that there is jurisdiction for the Authority to issue an order on the merits regarding MRP's operations and its ability to continue to do business in Tennessee, the Authority will issue that order as soon as the jurisdictional order is final.

FOR THE TENNESSEE REGULATORY AUTHORITY:

A handwritten signature in black ink, appearing to read "K. David Waddell", is written over a horizontal line.

K. David Waddell, Executive Secretary

cc: Parties of Record

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 27, 1999

IN RE:)
)
SHOW CAUSE PROCEEDING) DOCKET NO.: 98-00018
AGAINST MINIMUM RATE PRICING,)
INC.)

NOTICE OF REVOCATION OF CERTIFICATION OF
MINIMUM RATE PRICING, INC.

You are hereby notified that at the Authority Conference held on April 27, 1999, after due deliberation, the Directors of the Tennessee Regulatory Authority voted unanimously to revoke the certification, effective immediately, of Minimum Rate Pricing, Inc. ("MRP") as an operator service provider and a reseller of telecommunications services in the state of Tennessee, that had been granted on July 18, 1997. Pursuant to Tenn. Code Ann. § 65-2-112, the Authority made findings of fact and conclusions of law that were stated on the record and that included findings that MRP violated state statute(s) and rules as set forth in Issues 1, 2, 3, 4, and 5 as alleged in the *Order Requiring Minimum Rate Pricing, Inc. to Appear and Show Cause Why A Cease and Desist Order, Fine and/or Order Revoking Authority Should Not Be Issued* entered on July 27, 1998.

At the Conference, the parties were directed to file a joint agreement relative to an implementation plan which is to provide continuing service for MRP's existing

ATTACHMENT

customers as well as their transition to new service. Such agreement is to be filed by 4:30 PM Thursday, April 29, 1999, for consideration by the Authority at its May 4, 1999 Conference. If the parties are unable to reach a mutual agreement, any party may file its own plan by 4:30 PM on April 29, 1999, for consideration by the Authority at its May 4, 1999, Conference.

Copies of the transcript containing the Authority's decision of April 27, 1999, shall be mailed to each party's attorney of record. A written order memorializing this action of the agency and advising the parties of rights of reconsideration and judicial review will be forthcoming.



K. David Waddell, Executive Secretary

Copies sent to the following parties:

Walter E. Diercks, Esq.
Rubin, Winston, Diercks, Harris and Cooke
1333 New Hampshire Ave. N.W.
10th Floor
Washington, DC 20036
FAX: (202) 429-0657

Rochelle Weisburg, Esq.
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460 Park Avenue
New York, NY 10022-1906
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